

2/2/06

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FRED ROHRBACKER,	)	
Plaintiff,	)	
	)	Civil Action No. 05-11562-RGS
v.	)	
	)	
MODERN CONTINENTAL COMPANIES, INC.,)	)	
HARBOR CRUISES, LLC, BOSTON HARBOR )	)	
CRUISES, A JOINT VENTURE,	)	
PROVINCETOWN PUBLIC PIER CORP., and )	)	
PROVINCETOWN-MACMILLAN REALTY )	)	
TRUST,	)	
Defendants.	)	

**CROSS CLAIM OF DEFENDANT,**  
**PROVINCETOWN-MACMILLAN REALTY TRUST AGAINST**  
**DEFENDANT, HARBOR CRUISES, LLC**

Defendant, Provincetown-MacMillan Realty Trust (the "Trust"), hereby files this cross claim against Defendant, Harbor Cruises, LLC, and as grounds therefor states:

1. The Plaintiff has asserted a claim for personal injury against the Trust arising out of an alleged slip and fall on property owned by the Trust.
2. At the time of the Plaintiff's slip and fall, the Trust leased the property where the Plaintiff allegedly fell to Defendant, Harbor Cruises, LLC. The lease between the Trust and Harbor Cruises, LLC contains a provision which requires Harbor Cruises, LLC to maintain the area subject to the lease and to indemnify the Trust in the event of any claim for damages arising out of an alleged fall on or around the leased premises.

**Count I**

3. In the event that the Plaintiff obtains a judgment against the Trust in this action, those damages were proximately caused, in whole or in part, by the failure to maintain the leased premises or other negligence of the Co-Defendant, Harbor Cruises, LLC.

4. If the Trust is found liable in this action, which liability it denies, then the Trust is entitled to indemnification from Harbor Cruises, LLC based on the terms of the lease and/or the wrongful acts or omissions of Harbor Cruises LLC at common law.

**Count II**

5. The damages sustained by the Plaintiff, if any, were proximately caused, in whole or in part, by the negligence of the Co-Defendant, Harbor Cruises, LLC.

6. If the Trust is found liable in this action, which liability it denies, then the Trust is entitled to contribution from Harbor Cruises, LLC, as a joint tort-feasor in accordance with M.G.L. c. 231B.

WHEREFORE, the Defendant, Provincetown-MacMillan Realty Trust, demands judgment against Harbor Cruises, LLC for indemnification or contribution with regard to any sums that may be adjudged for the Plaintiff and against Provincetown-MacMillan Realty Trust.

Respectfully submitted,  
**Provincetown-MacMillan Realty Trust**  
By its attorneys:

/s/ Kevin T. Smith  
Kevin T. Smith  
BBO #555507  
**MASTERMAN, CULBERT & TULLY**  
One Lewis Wharf  
Boston, MA 02110  
(617) 227-8010

DATE: January 31, 2006

MCT/157552.1

**CERTIFICATE OF SERVICE**

I, Kevin T. Smith , hereby certify that I served a true copy of the above Cross Claim of Defendant, Provincetown-MacMillan Realty Trust, Against Harbor Cruises, LLC, by first class mail, postage prepaid, to the following counsel of record:

**Plaintiff**

David J. Berg, Esquire  
**Latti & Anderson LLP**  
30-31 Union Wharf  
Boston, MA 02109

**Provincetown Public Pier Corporation**

John J. Davis, Esquire  
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**Modern Continental Companies**

Thomas B. Farrey, III, Esquire  
Edward B. McGrath  
**Burns & Farrey**  
150 Federal Street  
Boston, MA 02110

**Modern Continental, Harbor Cruises, LLC and  
Boston Harbor Cruises**

Jeanne O. McHugh, Esquire  
**Kenner, Engelberg, Bratcher & Whalen**  
60 State Street, Suite 600  
Boston, MA 02109

/s/ Kevin T. Smith

Kevin T. Smith

Dated: January 31, 2006